

NOTICE OF MOTION

COURT DETAILS

Court	Supreme Court of NSW
Division	Common Law
List	Common Law General
Registry	Sydney
Case number	2021/00358501

TITLE OF PROCEEDINGS

Plaintiff	Jason Peter Hegemann
First defendant	Joseph Tannous
Number of defendants	4

FILING DETAILS

Person seeking orders	Jason Peter Hegemann, plaintiff
Filed in relation to	Plaintiff's claim
Legal representative	Kathryn Emeny
Legal representative reference	210427
Contact name and telephone	Kathryn Emeny, 03 5560 2000
Contact email	kae@maddenslawyers.com.au

PERSON AFFECTED BY ORDERS SOUGHT

Joseph Tannous, Moussa Tannous, Charbel Tannous and Kwik Flo Pty Ltd, defendants

HEARING DETAILS

This motion is listed at

ORDERS SOUGHT

- 1 Pursuant to s 162(1) of the *Civil Procedure Act 2005 (Act)*, the time and date before which Group Members may opt out of the proceeding be fixed as 4:00pm AEST on 18 November 2022 (**Closure Date**).
- 2 Pursuant to ss 175 and 176 of the Act, the Court approve the form and content of:
 - a. the notice to Group Members of the commencement of the class action and their opt-out rights at Annexure A to this motion (**Notice**); and
 - b. the advertisement which is Annexure B to this motion (**Advertisement**).
- 3 Pursuant to s 176 of the Act, the Notice be given to group members on or before 22 September 2022 by Maddens Lawyers:
 - a. sending a copy of the Notice by ordinary prepaid post to the address of:
 - i. each person who has registered his or her interest in the proceedings with Maddens Lawyers;
 - ii. any unregistered fire-affected property known to Maddens Lawyers;
 - b. uploading a copy of the Notice on the Maddens Lawyers website www.maddenslawyers.com.au;
 - c. emailing a copy of the Notice to his Honour Justice Garling's Associate for publication on the Supreme Court of New South Wales website; and
 - d. creating on the Maddens Lawyers' Facebook page a post describing the opt-out process established by these orders, together with a link to the page on the plaintiff's solicitor's website described in prayer 3(b) above.
- 4 Pursuant to s 176 of the Act, the Advertisement is to be published in one weekday edition of the Lithgow Mercury on or before 8 October 2022.
- 5 If, on or before the Closure Date, Maddens Lawyers receive a notice purporting to be an opt-out form referable to this proceeding, Maddens Lawyers must file the notice in the Registry within 14 days of receipt and the notice shall be treated as an opt out received by the court at the time it was received by Maddens Lawyers.
- 6 The costs of and incidental to the procedures set out at Prayers 3 and 4 be paid initially by the plaintiff, on the basis that the costs will subsequently fall to be dealt with by the Court as costs in the cause.


- 7 The parties have leave to inspect the court file and to copy any opt out forms filed following the Closure Date.
- 8 The Notice or Advertisement may be amended by Maddens Lawyers before it is posted, advertised or displayed in order to correct any website or email address or telephone number or other non-substantive error.
- 9 The Applicant file and serve an affidavit verifying the steps taken in compliance with these orders and including any opt out notice received on or before the Closure Date by 25 November 2022.
- 10 Any further or other orders as this Honourable Court deems fit.

SIGNATURE

Signature of legal representative

Capacity

Date of signature 9.9.22

 **KATHRYN AMY EMENY**
of Maddens Lawyers 219 Koroit Street
Warrnambool An Australian legal practitioner
within the meaning of the Legal Profession
Uniform Law (Victoria)

NOTICE TO PERSON AFFECTED BY ORDERS SOUGHT

If you do not attend, the court may hear the motion and make orders, including orders for costs, in your absence.

REGISTRY ADDRESS

Street address

Postal address

Telephone

ANNEXURE A – NOTICE

SUPREME COURT OF NEW SOUTH WALES

IMPORTANT NOTICE TO GROUP MEMBERS

JASON HEGEMANN

v

JOSEPH TANNOUS & ORS

(2021/00358501)

REPRESENTATIVE PROCEEDING REGARDING THE FIRE ON 4 DECEMBER 2019 AT PALMERS OAKY

On 17 December 2021, Mr Hegemann (**the plaintiff**) commenced this representative proceeding in the Supreme Court of New South Wales against Joseph Tannous, Moussa Tannous, Charbel Tannous and Kwik Flo Pty Ltd (**the defendants**).

The proceeding is brought by the plaintiff on his own behalf and on behalf of persons who suffered personal injury (whether physical or psychiatric) and/or loss or damage to property as a result of the fire that commenced at 1620 Upper Turon Road, Palmers Oaky, NSW, on 4 December 2019. Persons fitting that description are defined in this proceeding as “**group members**”.

The Supreme Court has ordered that this notice be published for the information of persons who might be group members on whose behalf this representative proceeding is brought and who may be affected by it.

If you think you may be a group member you should read this notice carefully as it may affect your rights. Any questions you have concerning the matters contained in this notice should not be directed to the Court.

If there is anything in it that you do not understand you can contact Maddens Lawyers on 1800 815 228 or seek your own legal advice.

1. What is a representative proceeding?

A representative proceeding is commonly known as a “class action”. It is a legal action brought by one or more persons (the plaintiff) on their own behalf and on behalf of a group of other people (group members) against another person or persons (the defendants) where the plaintiff and group members have similar claims against the defendants.

Group members are bound by any judgment in or settlement of the representative proceeding unless they choose to not participate by “opting out” of the proceeding. This means that:

- a) if the representative proceeding is successful or settles, group members may be eligible for a share of any damages awarded by the court or settlement monies;

- b) if the representative proceeding is unsuccessful, group members are bound by that result; and
- c) regardless of the outcome of the representative proceeding, group members will not be able to pursue their claims against the **defendants** in separate legal proceedings unless they have opted out.

2. What is this representative proceeding about?

On 4 December 2019, a fire started at Palmers Oaky, NSW on a property at 1620 Upper Turon Road (also known as 'Eldracam Springs'), which spread and affected a number of properties, including the plaintiff's.

The plaintiff alleges that the fire commenced when a welder was being used for fencing works. He alleges that sparks were discharged from the welder which landed in nearby dry grasses resulting in the ignition of the fire, which then spread out of control.

The plaintiff alleges each of the defendants owed a duty of care to take reasonable precautions to prevent the ignition and spread of fire on the Eldracam Springs property. He alleges that the defendants breached this duty of care by failing to take reasonable precautions, which resulted in loss and damage to the plaintiff and group members. The allegations are detailed in the Statement of Claim filed on 17 December 2021.

Each of the defendants deny liability and are defending the proceedings.

3. Are you a group member?

You are a group member if you:

- a) suffered personal injury (whether physical injury or psychiatric injury) as a result of the Palmers Oaky fire; and/or
- b) suffered loss of or damage to property as a result of the Palmers Oaky fire; or
- c) are the legal personal representative of the estate of any deceased person who came within paragraphs (a) or (b) at the time of the Palmers Oaky fire.

4. What is opt out?

The plaintiff in a representative proceeding does not need to seek the consent of group members to commence a representative proceeding on their behalf. However, group members can cease to be group members by "opting out" of the representative proceeding. If you have been included as a group member in this representative proceeding but you do not want to continue to be a group member, you can opt out now.

An explanation of how to opt out is provided in **Section 5** below.

5. What should group members do?

If you fit the definition of a "group member" in this representative proceeding, there are three options available to you. If you wish to remain a group member, you can choose Option 1 or Option 2 below.

Option 1: Register

If you wish to remain a group member and would like to make a claim for loss or damage you have suffered as a result of the Palmers Oaky fire in this representative proceeding, you should contact Maddens Lawyers to tell them what your loss and damage is, as follows:

Postal: Kathryn Emeny
Maddens Lawyers
PO BOX 320
Warrnambool VIC 3280

Email: kae@maddenslawyers.com.au

Group members who register with the plaintiff's solicitors will be bound by the outcome of the representative proceeding. If the representative proceeding is successful, you will be entitled to share in the benefit of any order, judgment or settlement in favour of the plaintiff and group members. You may have to satisfy certain conditions and establish elements of your claim that are relevant specifically to you, before your entitlement arises. You can choose to retain Maddens Lawyers, or other solicitors, to help you do this.

If the representative proceeding is unsuccessful or is not as successful as you might have wished, you will not be able to sue on the same claim in any other proceeding.

If you wish to remain a group member, even if you do not wish to retain Maddens Lawyers to act for you as a client, you may wish to contact Maddens Lawyers to "**register**" as a group member to ensure that future notices about the representative proceeding can be sent to you, or your legal representative, directly.

Option 2: Do Nothing

If you do nothing, you will remain a group member and remain bound by any order, judgment or settlement in the representative proceeding. The plaintiff will continue to bring the proceeding on your behalf up to the point where the Court determines the questions that are common to the claims of the plaintiff and the group members.

However, unless you identify yourself as a "group member" no one may be aware that you are a group member and you may not be able to share in any possible benefit flowing from the representative proceeding. You may also have to satisfy certain conditions before your entitlement to a share in any possible benefit arises.

It is likely that the Court will order notice be given to group members of any judgment in favour of the plaintiff and group members, or of any proposed settlement.

If the representative proceeding is unsuccessful or is not as successful as you might have wished, you will not be able to sue on the same claim in any other proceeding.

Option 3: Opt Out

If you do not wish to be a group member you should opt out of the proceeding by completing the “Opt Out Notice” below. If you opt out, then you will cease to be a group member and will not be affected by any orders made in the representative proceeding.

If you wish to bring your own claim against the defendants, you should seek your own legal advice about your claim and the applicable time limit before opting out.

You must decide what to do BEFORE 4:00pm on 18 November 2022. If you want to opt out, you must send your “Opt Out Notice” to:

- a) the NSW Supreme Court Registry, NSW GPO Box 3, Sydney NSW 2001; and
- b) Maddens Lawyers, PO Box 320 Warrnambool, Victoria, 3280.

It is very important that you act promptly in deciding what you want to do. If you are not sure whether you are a group member, or you want further information or advice, you can contact Maddens Lawyers on **1800 815 228** or email kae@maddenslawyers.com.au. Please **do not** contact the Court.

6. Will you be liable for legal costs?

Group members will not become liable for any legal costs simply by remaining or registering as group members. Group members in a representative proceeding **are not** legally liable for the legal costs associated with bringing the proceeding.

However, if the proceedings are successful and there is a judgment or settlement that results in compensation becoming payable to group members, then:

- a) if the preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you can engage Maddens Lawyers or other solicitors to do that work for you. You may be liable for costs associated with the determination of issues concerned only with your claim; and
- b) if any compensation becomes payable to you as a result of any order, judgment or settlement in the representative proceeding, the Court may make an order that some of that compensation be used to help pay a share of the costs which are incurred by the plaintiff in running the representative proceeding but which are not able to be recovered from the defendants. The plaintiff will ask the Court to make such an order if the occasion arises.

Representative proceedings are often settled out of Court. If this occurs in this proceeding, you may be able to claim from the settlement amount without retaining a lawyer.

7. What if your insurer has contacted you about the representative proceeding?

Some group members had insurance and received insurance payments arising out of the Palmers Oaky fire. Your insurer may wish to participate in the representative proceeding to seek recovery of compensation from the defendants for the insurance payout made to you.

Alternatively, you may have been contacted by your insurer, insurance broker or insurer's lawyers regarding your participation in the representative proceeding and the rights and obligations you may have under the terms of your policy of insurance.

Any steps taken by your insurer on your behalf may impact on your legal rights and obligations. You may benefit from seeking independent legal advice in respect of this issue.

If you have been contacted by or on behalf of your insurer about your participation in the representative proceeding you can contact Maddens Lawyers on **1800 815 228** or alternatively you may wish to **seek independent legal advice**.

8. Where can you obtain copies of relevant documents?

Copies of relevant documents, including the Statement of Claim and Defences, may be obtained by:

- a) Downloading them from www.maddenslawyers.com.au;
- b) Telephoning Maddens Lawyers on 1800 815 228 and requesting a copy; or
- c) Inspecting them by visiting the Registry of the Supreme Court in Sydney at Level 5, Law Courts Building, Queen's Square, 184 Phillip Street, Sydney NSW 2000.

Please consider the above matters carefully. If you are not sure whether you are a group member or want further information, you can contact the plaintiff's solicitors Maddens Lawyers on 1800 815 228 or seek your own legal advice. You should not delay in making your decision, as the deadline for opting out is **4:00pm on 18 November 2022**.

This notice is published pursuant to Orders made by the Supreme Court on **XX XX 2022**.

OPT OUT NOTICE**COURT DETAILS**

Court	Supreme Court of New South Wales
Division	Common Law
List	General
Registry	Sydney Registry
Case number	2021/00358501

TITLE OF PROCEEDINGS

Plaintiff	Jason Peter Hegemann
First Defendant	Joseph Tannous
Number of Defendants	4

FILING DETAILS

Filed for

[person opting out of representative proceedings]

Legal representative

Legal representative reference

Contact name and telephone

Contact email

OPT OUT NOTICE

Name of person opting out

Address of person opting out

I, a group member in these representative proceedings, opt out of the proceedings.

I understand that in opting out:

- 1 I forego the right to share in any relief obtained by the representative party in the representative proceedings;
- 2 I am not entitled to receive any further notification about the conduct or disposition of the proceedings; and
- 3 To the extent that I have a claim against the defendants(s), any limitation period suspended by the commencement of the representative proceedings has recommenced to run.

SIGNATURE

Signature of legal representative

OR

Signature of or on behalf of
person opting out if not legally
represented

Capacity

[eg solicitor, authorised officer of person opting out,
person opting out]

Date of signature

NOTICE TO PERSON OPTING OUT

You must, within the time specified in the notice to group members:

- 1 file this form in the registry of the court at the address below, or in the manner provided in the notice to group members; and
- 2 serve a copy of this form on the representative party at the address, or in the manner provided, in the notice to group members.

REGISTRY ADDRESS

Street address	Supreme Court of NSW Law Courts Building, Queen's Square 184 Phillip Street Sydney NSW 2000
Postal address	Supreme Court of NSW GPO Box 3 Sydney NSW 2001
Telephone	1300 679 272

ANNEXURE B - ADVERTISEMENT

JASON HEGEMANN v JOSEPH TANNOUS & ORS (2021/00358501)

**REPRESENTATIVE PROCEEDING REGARDING THE FIRE ON
4 DECEMBER 2019 AT PALMERS OAKY**

On 17 December 2021, Mr Hegemann commenced this representative proceeding in the Supreme Court of New South Wales against Joseph Tannous, Moussa Tannous, Charbel Tannous and Kwik Flo Pty Ltd. The plaintiff alleges that the fire commenced when a welder was being used for fencing works.

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- d) suffered personal injury (whether physical injury or psychiatric injury) as a result of the Palmers Oaky fire; and/or
- e) suffered loss of or damage to property as a result of the Palmers Oaky fire; or
- f) are the legal personal representative of the estate of any deceased person who came within paragraphs (a) or (b) at the time of the Palmers Oaky fire.

What should group members do?

If you fit the definition of a “group member” in this representative proceeding, there are three options available to you.

Option 1: Register

If you wish to remain a group member and would like to make a claim for loss or damage you have suffered as a result of the Palmers Oaky fire in this representative proceeding, you should contact Maddens Lawyers.

Option 2: Do Nothing

If you do nothing, you will remain a group member and be bound by any order, judgment or settlement in the representative proceeding. However, unless you identify yourself as a “group member” no one may be aware that you are a group member and you may not be able to share in any possible benefit flowing from the representative proceeding.

Option 3: Opt Out

If you do not wish to be a group member you should opt out of the proceeding by completing the “Opt Out Notice”. If you opt out, then you will cease to be a group member and will not be affected by any orders made in the representative proceeding. You must do this by **4.00pm on 18 November 2022**.

Where can you obtain copies of relevant documents?

Copies of relevant documents, including the Statement of Claim and Defences, may be obtained by:

- d) Downloading them from www.maddenslawyers.com.au;

- e) Telephoning Maddens Lawyers on 1800 815 228 and requesting a copy; or
- f) Inspecting them by visiting the Registry of the Supreme Court in Sydney at Level 5, Law Courts Building, Queen's Square, 184 Phillip Street, Sydney NSW 2000.

If you want to find out more information about the case or register, please contact Maddens Lawyers on 1800 815 228 or www.maddenslawyers.com.au.